

REMARKS

In the Office Action dated April 20, 2004, the Examiner rejected claims 25-68 and 98 under 35 U.S.C. §§ 102 and/or 103 in view of Henkel, German Patent No. 2,624,690 ("Henkel"), Goldwell, German Patent No. 19,721,785 ("Goldwell") and/or Yoshihara, U.S. Patent No. 5,332,581 ("Yoshihara"). In the following remarks, applicant will respond to those rejections and highlight the differences between the pending claims and the cited references such that it becomes apparent to the Examiner that these rejections should be reconsidered and withdrawn.

The Examiner rejected claims 25-47, 50-68 and 98 under 35 U.S.C. § 102 as being anticipated by Henkel and/or Goldwell. Applicant respectfully submits that the Examiner's continued reliance on Henkel and Goldwell is misplaced. It is black letter law that to be anticipatory, a prior art reference must disclose each and every element of the claim or claims at issue -- Henkel and Goldwell both fall far short of this requirement.

In an Office Action dated June 10, 2003, the Examiner previously stated that the "rejection of claims 25, 59 and 60 under 35 U.S.C. 102(b) as being anticipated by Henkel, DE 2,624,690, is withdrawn in view of applicant's amendments and remarks." Similarly, the Examiner withdrew his rejection of claims 26-42 under § 103 as being unpatentable over Henkel, his rejection of claims 25-47, 50-53, 55-68 and 98 under § 102 as being unpatentable over Goldwell, and his rejection of claims 48-49 under § 103 as being unpatentable over Goldwell in view of Yoshihara. Curiously, in the instant Office Action, the Examiner has merely reasserted the same rejections that were previously withdrawn.

In the Amendment filed on January 26, 2004, Claim 25 was amended to comply with a § 112 rejection asserted by the Examiner. Specifically, the language "% by weight" was substituted for "parts

1 by weight". However, the return to a percentage basis for claiming the components present in the novel
2 hair coloring and highlighting composition of the present invention merely further clarifies the claimed
3 invention, and does not significantly alter the amounts of components in the claimed composition. The
4 present invention, as claimed, remains distinct from the cited references as acknowledged by the
5 Examiner in his June 10, 2003 Office Action.

6 Specifically, Henkel still does not teach either the component proportions or the immediate
7 application required by Claim 25. Rather, Henkel merely discloses the discovery that two particular
8 direct blue dyes, namely brilliant blue R 28032 and lilac R 5283, are stable in bleaching compositions
9 and are well absorbed by the hair. This narrow disclosure still bears no resemblance to the present
10 invention as claimed. Applicant recognizes that hair bleaching/highlighting compositions are inherently
11 unstable. Applicant avoids this well-recognized problem by mixing the components at approximately
12 the same time as they are used. This is an opposite approach to Henkel's search for stable dyes, and it
13 allows applicants to color hair any desired shade. Conversely, Henkel is limited to platinum blond, and
14 merely discloses a non-yellowing bleach rather than a true hair colorant like the present invention.
15 Thus, claims 26-42, 59, and 60 are neither anticipated nor obvious in light of Henkel.

16 Regarding the Examiner's rejections based on Goldwell, it too still does not teach nor suggest a
17 composition having the component percentages as claimed in the present invention, nor the principle
18 improvement disclosed by the current invention. To the contrary, Goldwell teaches away from the
19 present invention by relying on a combination of a xanthene-based hair dyeing agent, a peroxide based
20 developer, and a persulfate based bleaching compound. The present invention, on the other hand,
21 discloses that xanthene-based compositions are not suitable for use by the large number of individuals

1 who have sensitive or treated hair.

2 Also, Goldwell discloses a composition which contains xanthene gum, thereby falling outside
3 the scope of the current invention, which specifically excludes such compositions. Goldwell is virtually
4 identical to Japanese Patent Publication No. 08175940 (cited in the current application on page 2),
5 since both disclose a product containing a xanthene-based dyeing agent, not suitable for use by those
6 with sensitive or chemically treated hair. Thus, the claims in the pending application cannot be
7 anticipated by Goldwell, because Goldwell discloses a composition containing xanthene gum, a
8 disadvantage of the prior art which this invention was specifically designed to overcome.

9 Furthermore, Goldwell does not teach or suggest a composition having the component
10 percentages by weight of Claim 25. Specifically, the present application claims a composition having 1-
11 30% powder bleach mixed with 20%-60% aqueous developer and 20%-60% cationic dye hair
12 colorant. Such a composition is important for chunking and streaking hair, particularly on sensitive or
13 African-American hair. This is accomplished by carefully limiting the amount of persulfate. If the
14 persulfate level is not minimized, the resulting composition is too caustic for use with fragile hair types.
15 Goldwell's persulfate levels are approximately seven times higher than the levels called for in
16 Applicant's invention. In short the composition of Goldwell is wholly unsuited for use in the present
17 invention. Therefore, Goldwell neither anticipates nor renders obvious the invention as now claimed in
18 amended claim 25.

CONCLUSION

In view of the foregoing, applicant respectfully submits that the present invention represents a patentable contribution to the art and the application is in condition for allowance. Early and favorable action is accordingly solicited.

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Respectfully submitted,



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